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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUSENCIO VILLAMIL-OCAMPO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-71431

Agency No. A77-975-089

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Ausencio Villamil-Ocampo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for cancellation of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. Our jurisdiction is governed by 8 U.S.C. § 1252. *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006). We review de novo questions of law. *Id.* We deny in part and dismiss in part the petition for review.

The IJ correctly concluded that Villamil-Ocampo is ineligible for cancellation of removal because of his 1996 conviction for possession of cocaine under California Health & Safety Code § 11350(a). *See* 8 U.S.C. § 1229b(b)(1)(C). Contrary to Villamil-Ocampo’s contention, he does not qualify for relief under the Federal First Offender Act (“FFOA”), 18 U.S.C. § 3607, because he previously received the state-law equivalent of FFOA relief with respect to his 1992 charge. *See De Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1020 (9th Cir. 2007) (alien may not avoid the immigration consequences of a drug conviction as a first offender when, as a result of a prior drug possession arrest, he was granted pretrial diversion under California law and was not required to plead guilty).

Villamil-Ocampo’s due process contentions are unpersuasive.

We lack jurisdiction to review the agency’s discretionary decision to deny voluntary departure. *See* 8 U.S.C. § 1229c(f); *Ramadan v. Gonzales*, 479 F.3d 646, 654 (9th Cir. 2007) (per curiam) (stating that the REAL ID Act “does not restore jurisdiction over discretionary determinations”).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.